

REMARKS

In the instant application, claims 21-45 are pending and have been made the subject of a Restriction Requirement.

I. Restriction Requirement Under 35 U.S.C. § 121

The Examiner asserts that Restriction to one of the following inventions is required under 35 U.S.C. § 121:

- I. Claims 21-34, drawn to compounds and compositions of formula (I) when R is directed to a 1,2-diazine such as Examples 24-26, 2.4. and 3.4. compounds classified in class 544, subclass 244+.
- II. Claims 21-34, drawn to compounds and compositions of formula (I) when R is directed to a 1,3-diazine such as Examples 19, 2.21, and 3.21. compounds classified in class 544, subclass 242+.
- III. Claims 21-34, drawn to compounds and compositions of formula (I) when R is directed to a 1,4-diazine such as Examples 20, 23, 2.3. and 3.3. compounds classified in class 544, subclass 236+.
- IV. Claims 21-34 and 44, drawn to compounds and compositions of formula (I) containing a pyridine or piperidine such as Examples 9-10, 17-18, 21-22, 31-41, 2.1.-2.2., 2.7.-2.20., 3.1.-3.2. and 3.5.-3.20. compounds classified in class 546, various subclasses.
- V. Claims 21-34, drawn to compounds and compositions of formula (I) containing at least one thiazole such as Examples 11-12, 16, 28 and 2.6, compounds classified in class 548, subclass 146.
- VI. Claims 21-34, drawn to compounds and compositions of formula (I) containing a oxazole which controls classification such as Examples 27 and 2.5, compounds classified in class 548, subclass 215.
- VII. Claims 21-34 and 45, drawn to compounds and compositions of formula (I) not falling within the scope of Groups I to VI, various classifications.
- VIII. Claim 35, drawn to making the compounds of Groups I to VII, classification as above.
- IX. Claims 36-43, drawn to methods of treating various diseases, classified in class 514.

Restriction Requirement, pages 2-3.

Applicants submit that the Examiner has not satisfied the requirements for the Restriction Requirement among Groups I-IX. 35 U.S.C. § 121 states that “[I]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions...” Furthermore, 37 C.F.R. § 1.141 states that “[T]wo or more independent and distinct inventions may not be claimed in one national application...” Thus, the Examiner has to prove that the inventions in the instant application are both independent and distinct to issue a Restriction Requirement. In the Office Action, the Examiner only proffers that the inventions are distinct. The Examiner, however, provides no explanation whatsoever why the inventions in the instant application are independent. Therefore, the Examiner has not met her burden to prove that the Restriction Requirement is proper. Accordingly, Applicants respectfully request reconsideration and withdrawal of the restriction requirement between the claims encompassed by these groups.

II. Provisional Election

To comply with the Examiner's Restriction Requirement, Applicants provisionally elect, with traverse, Group IV, claims 21-34 and 44, drawn to compounds and compositions of formula (I) containing a pyridine or piperidine.

To comply with the Examiner's Election of Species Requirement, Applicants provisionally elect the species of the compound of Example 2, (4*R*)-3-(2-{[8-(5-cyanopyridin-2-yl)-8-azabicyclo[3.2.1]oct-3-yl]-exo-amino}acetyl)thiazolidine-4-carbonitrile, a compound of formula (I) wherein R is 5-cyanopyridin-2-yl, B is a group of formula (I), and Z is a group formula (A). Applicants submit that claims 21-34 read on the elected species.

Applicants submit that once the compounds of the present invention are found to be novel, then the other Groups defined by the Examiner where appropriate should be subject to rejoinder, pursuant to linking claim practice.

Applicants also affirm their right to file one or more divisional applications with respect to any other non-elected subject matter.

Respectfully submitted,



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